

APPENDIX A – 9

Regional Policy for Enforcing Fund Obligation Deadlines and Project Substitution Requests for STP, CMAQ and Enhancements Funds MTC Resolution No. 3606



Date: October 22, 2003
W.I.: 1512
Referred by: PAC

ABSTRACT

Resolution No. 3606

This Resolution establishes the regional policy for project delivery for the Transportation Equity Act for the Twenty-First Century (TEA-21) Reauthorization period for Surface Transportation Program (STP) and Congestion Management and Air Quality Improvement (CMAQ) funds.

Further discussion of this action is contained in MTC "Executive Director's Memorandum" dated October 8, 2003.

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W.I.: 1512
Referred by: PAC

Re: Regional Project Delivery Policy for TEA-21 Reauthorization for STP and CMAQ Funds

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3606

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency (RTPA) for the San Francisco Bay Area pursuant to Government Code § 66500 et seq.; and

WHEREAS, MTC is the designated Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area Region (the region); and

WHEREAS, MTC, as the designated RTPA and MPO for the region, is responsible for programming and managing certain federal and state funding provided to the San Francisco Bay Area for transportation purposes; and

WHEREAS, Assembly Bill 1012 (Chapter 783, Statutes of 1999 - Torlakson) established stringent timely use of funds deadlines for projects receiving federal Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement (CMAQ) program funding; and

WHEREAS, Section 16304 of the California Government Code requires that federal funds obligated to a project must be encumbered within two state fiscal years following the year of obligation, and requires that these funds be liquidated (expended, invoiced and reimbursed) within three state fiscal years following the state fiscal year of encumbrance; and

WHEREAS, the region could lose STP and CMAQ funding if projects within the region do not adhere to the timely use of funds requirements under AB 1012 and Section 16304 of the California Government Code; and

WHEREAS, the region has used all of its federal Obligation Authority (OA) under TEA-21 and has over 125 projects totaling approximately \$100 million waiting for additional OA; and

WHEREAS, Attachment A to this resolution, attached hereto and incorporated herein as though set forth at length, establishes the policy for managing the region's OA and enforcing the region's delivery of STP and CMAQ funding; now, therefore, be it

RESOLVED, that MTC approves the Regional Project Delivery Policy for TEA-21 Reauthorization for STP and CMAQ funds set forth in Attachment A to this resolution.

METROPOLITAN TRANSPORTATION COMMISSION

Steve Kinsey, Chair

The above resolution was entered into
by the Metropolitan Transportation
Commission at a regular meeting of the
Commission held in Oakland, California,
on October 22, 2003

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Regional Project Delivery Policy for TEA-21 Reauthorization for STP and CMAQ Funds

General Policy

The region has established deadlines for funding in the Surface Transportation Program (STP) and Congestion Mitigation and Air Quality (CMAQ) Program to ensure timely project delivery against state and federal funding deadlines. This resolution establishes a standard policy for enforcing project funding deadlines and project substitutions for these funds during the Transportation Equity Act for the Twenty-First Century (TEA-21) Reauthorization.

The regional STP and CMAQ programs are project specific. Projects are chosen for the program based on eligibility, project merit, and deliverability within the established deadlines. The programmed STP and CMAQ funds are for those projects alone.

It is the responsibility of the implementing agency at the time of programming, to ensure the regional deadlines and provisions of the regional project delivery policy can be met.

MTC staff will actively monitor and report the obligation status of projects to the Finance Working Group (FWG) of the Bay Area Partnership. The FWG will monitor project delivery issues as they arise and make recommendations to the Partnership Technical Advisory Committee (PTAC) as necessary.

The implementing agency or MTC may determine that circumstances may justify changes to the STP and CMAQ programming. These changes, or amendments to these regional programs, are not routine. All proposed changes will be reviewed by MTC staff before any formal actions on program amendments are considered by the Commission. All changes must follow MTC policies on the Public Involvement Process and Federal Air Quality Procedures and Conformity Protocol. Changes must be consistent with the Regional Transportation Plan (RTP), must not adversely affect the expeditious implementation of Transportation Control Measures (TCMs), must not negatively impact the deliverability of other projects in the regional programs, and must not affect the conformity finding in the Transportation Improvement Program (TIP).

In selecting projects to receive redirected funding, the Commission may use existing lists of projects that did not receive funding in past programming exercises, or direct the funds to agencies with proven on-time project delivery, or could identify other projects with merit to receive the funding, or retain the funding for future programming cycles.

Final decisions regarding the reprogramming of available funds will be made by the Commission.

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Project Cost Savings/Reductions in Scope/Project Failures

From time to time projects may be completed at a lower cost than anticipated, or have a minor reduction in scope resulting in a lower project cost, or may not proceed to implementation. In such circumstances, the implementing agency must notify MTC, Caltrans and the appropriate county Congestion Management Agency (CMA), within a timely manner, that the funds resulting from these 'project savings' will not be used.

Project savings accrued prior to the established obligation deadline are available for redirection within the program of origin. Savings within the formula-based programs, such as county guaranteed funding returned to counties based on a population share, are available for redirection by the CMAs within the formula program, subject to Commission approval.

Project savings within regional competitive programs, such as the regional Transportation for Livable Communities (TLC) program, or for regional customer service projects, such as TravInfo®, or for planning activities, such as the 3% planning funds for CMA planning activities, are available for redirection by the Commission.

For all programs, the projects using the redirected savings prior to the obligation deadline must still obligate the funds within the original deadline.

Project savings or unused funding realized after the obligation deadline return to MTC. Any funds that have been obligated but remain unused will be deobligated from the project and returned to the Commission for redirection.

Project Advances

Obligations for funds advanced from future years of the TIP will be permitted only upon the availability of surplus OA and SBA in a particular year, with current programmed projects that have met the delivery deadlines having priority for OA in a given year. Advanced obligations will be based on the availability of OA and will only be considered after April 1, and before June 30 of each fiscal year. In some years, OA may not be available for advancements until after June 30, but the request for the advanced OA must still be received by Caltrans prior to June 30.

Implementing agencies wishing to advance projects may request Advance Construction (AC) authorization from Caltrans (or pre-award authority from FTA) to proceed with the project using local funds until OA becomes available.

Specific Policy Provisions

Projects selected to receive STP or CMAQ funding must have a demonstrated ability to use the funds within the established regional, state and federal deadlines. This criteria will be used for selecting projects for funding, and for placement of funding in a particular year of the TIP.

It is the responsibility of the implementing agency to ensure the funds can be used within the established regional, state and federal deadlines and that the provisions of the regional delivery policy can be met. It is also the responsibility of the implementing agency to continuously monitor the progress of the programmed funds against regional, state and federal deadlines, and to report any potential difficulties in meeting these deadlines, (or difficulties in meeting the provisions of the regional delivery policy) to MTC, Caltrans and the appropriate county CMA within a timely manner, to seek solutions to potential problems well in advance of potential delivery failure or permanent loss of funding.

Specific provisions of the Regional Project Funding-Delivery Policy are as follow:

- **Funds to be Obligated/Transferred in the Fiscal Year Programmed in the TIP**

STP and CMAQ funds are to be programmed, up to the apportionment level for that fiscal year, in the TIP within the fiscal year in which the funds are to be obligated by the Federal Highway Administration (FHWA) or transferred to the Federal Transit Administration (FTA), similar to the programming of the State Transportation Improvement Program (STIP). This will improve the overall management of federal Obligation Authority (OA) within the region and improve the likelihood that OA and State Budget Authority (SBA) will be available for projects that are programmed in a particular fiscal year.

- **Field Reviews**

Implementing agencies are required to request a field review within 6 months of MTC's approval of the project in the TIP for federal-aid projects receiving funding through the STP and CMAQ programs that are subject to AB 1012 or regional obligation deadlines. This policy also applies to federal-aid projects in the STIP. The requirement does not apply to projects for which a field review would not be applicable (such as FTA transfers, regional customer service projects and planning activities).

Failure for an implementing agency to make a good-faith effort in scheduling and/or obtaining a field review from Caltrans Local Assistance within six months of programming into the TIP could result in the funding being subject to reprogramming.

- **Complete Environmental Submittal to Caltrans 12 months prior to Obligation Deadline**

Implementing agencies are required to submit a complete environmental package to Caltrans for all projects (except those determined *Programmatic Categorical Exemption* as determined by Caltrans at the field review), twelve months prior to the obligation deadline for right of way or construction funds. This policy creates a more realistic time frame for projects to progress from the field review through the environmental and design process, to the right of way or construction phase. If the environmental process, as determined at the field review, will take longer than 12 months before obligation, the implementing agency is responsible to deliver the complete environmental submittal in a timely manner. Failure to comply with this provision could result in the funding being subject to reprogramming. The requirement does not apply to FTA transfers, regional customer service projects or planning activities.

- **Obligation/Submittal Deadlines**

Projects selected to receive STP and CMAQ funding must demonstrate the ability to obligate programmed funds by the established obligation deadline. This criteria will be used for selecting projects for funding, and for placement in a particular year of the TIP. It is the responsibility of the implementing agency to ensure the deadlines can be met.

In order to ensure funds are obligated or transferred to FTA in a timely manner, the implementing agency is required to deliver a complete funding obligation / FTA Transfer request package to Caltrans Local Assistance by April 1 of the year the funds are listed in the TIP. Projects with complete packages delivered by April 1 of the programmed year will have first priority for available OA. If the project is delivered after April 1 of the programmed year, the funds will not be the highest priority for obligation in the event of Obligation Authority (OA) limitations, and will compete with projects advanced from future years for limited OA. Fund obligation/FTA transfer requests submitted after the April 1 deadline will be viewed as subject to reprogramming.

Within the formula-based programs, such as county guaranteed funding returned to counties based on a population share the Congestion Management Agencies (CMAs) may adjust programming up until April 1 of the programmed year, swapping funds to a ready project in order to utilize all of the programming capacity, subject to available OA. The substituted project(s) must still obligate the funds within the original funding deadline.

For funding programmed through regional competitive programs, such as the regional Transportation for Livable Communities (TLC) program, or for regional customer service projects, such as TravInfo®, or for planning activities, such as the CMA planning activities, the Commission has discretion to redirect funds from delayed or failed projects.

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STP and CMAQ funds are subject to an obligation/FTA transfer deadline of June 30th of the fiscal year the funds are programmed in the TIP. Implementing agencies are required to submit the complete request for obligation or FTA transfer to Caltrans Local Assistance by April 1 of the fiscal year programmed in the TIP, and receive an obligation/FTA transfer of the funds by June 30th of the fiscal year programmed in the TIP. For example, projects programmed in FY 2005-06 of the TIP have an obligation/FTA transfer request submittal deadline (to Caltrans) of April 1, 2006 and an obligation/FTA transfer deadline of June 30, 2006. Projects programmed in FY 2006-07 have an obligation request submittal deadline (to Caltrans) of April 1, 2007 and an obligation/FTA transfer deadline of June 30, 2007.

- Submittal Deadline: April 1 of the fiscal year programmed in the TIP. The Implementing Agency is required to submit a complete obligation/transfer package to Caltrans (3 months prior to the Obligation Deadline).
- Obligation Deadline: June 30 of the fiscal year programmed in the TIP. No extensions will be granted to the obligation deadline.

April 1 - Regional submittal deadline. Compete package submittals received by April 1 of the fiscal year programmed in the TIP will receive first priority for obligations against available OA.

April 2 – June 30 - Projects submitted during this timeframe are subject to deprogramming. If OA is still available, these projects may receive OA if obligated by June 30. If OA is limited, these projects would compete for OA with projects advanced from the following fiscal year on a first come-first serve basis. Projects with funds to be advanced from future years must request the advance prior to June 30, in order to receive the funds within that federal fiscal year.

June 30 - Regional obligation deadline. Funds not obligated (or transferred to FTA) by June 30 of the fiscal year programmed in the TIP will be returned to MTC for reprogramming. No extensions of this deadline will be granted. Projects seeking advanced obligations against funds from future years, must request the advance prior to June 30, in order to receive the funds within that federal fiscal year.

The obligation deadline may not be extended. The funds must be obligated by the established deadline or they will be de-programmed from the project and redirected by the Commission to a project that can use the funds in a timely manner.

Note: Authorization of Advance Construction (AC) satisfies the regional obligation deadline requirement.

- **Encumbrance/Liquidation/Project Close-Out Deadlines**

STP and CMAQ funds must be encumbered by an approved State funding agreement within one state fiscal year after the fiscal year of obligation. Furthermore, the funds must be fully liquidated (expended, invoiced and reimbursed), within four state fiscal years after the fiscal year in which the funds were obligated, and the project must be accepted and closed out within five state fiscal years after the fiscal year in which the funds were obligated.

The following provisions are required in order to ensure no funds are lost after obligation. Failure to meet these requirements will result in the potential loss of funding for reimbursement of incurred project costs.

- Funds must be encumbered within one state fiscal year following the fiscal year in which the funds were obligated (encumbrance is approval of a funding agreement with the state). This requirement does not apply to FTA transfers.
- Construction/Equipment Purchase contract must be awarded within one state fiscal year following the fiscal year in which the construction funds were obligated (this requirement does not apply to FTA transfers).
- Funds must be liquidated (expended, invoiced and reimbursed) within four state fiscal years following the fiscal year in which the funds were obligated (this requirement does not apply to FTA transfers).
- Project must be accepted and closed out within one year of the last expenditure, or within five state fiscal years following the fiscal year in which the funds were obligated, whichever occurs first (this requirement does not apply to FTA transfers).
- For FTA projects, funds must be approved/awarded in an FTA Grant within one state fiscal year following the fiscal year in which the funds were transferred to FTA.

Funds that miss the encumbrance, liquidation/project close out deadlines are subject to de-obligation if not reappropriated by the State Legislature, or extended (for one year) in a Cooperative Work Agreement (CWA) with the California Department of Finance.

Implementing agencies with projects that require reappropriation in the State budget, or require a CWA from the California Department of Finance, or fail to meet the post-obligation provisions, or have projects that have been inactive for more than two years, regardless of federal fund source, are subject to MTC restrictions on receipt of OA for subsequent projects, and/or limitations on future programming of funds until the reappropriated/ inactive projects are cleared up and a firm commitment date is provided to Caltrans Local Assistance for meeting the next project milestone.

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MTC	State FY 1	State FY 2	State FY 3	State FY 4	State FY 5	State FY 6
Milestone Deadline	June 30	June 30	June 30	June 30	June 30	June 30

Programming	
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Obligation	
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Encumbrance	
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Award	
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Liquidation	
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Project Close-Out	
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- **Inactive Projects**

Most projects can be completed well within the state's seven-year deadline for project close-out. Yet it is viewed negatively by both FHWA and the California Department of Finance for projects to remain inactive for more than a few years. It is expected that funds for completed phases will be invoiced within a reasonable time of completion of work for the phase, and projects will be closed out within a reasonable time following project completion.

Implementing agencies that have projects that have not been closed out within one year of final expenditure, or have projects that remain inactive for more than two years, regardless of federal fund source, will have future OA limited for subsequent projects, and/or have restrictions on future programming. Completed phase invoicing and project close-out within a reasonable time will help ensure the implementing agency remains in good standing.

The intent of this regional delivery policy is to ensure implementing agencies do not lose any funds due to missing a federal or state funding deadline, while providing maximum flexibility in delivering transportation projects. MTC has purposefully established regional deadlines in advance of state deadlines, to provide the opportunity for implementing agencies, the CMAs, Caltrans, and MTC to solve potential problems and bring the project back on-line in advance of losing funding due to a missed state deadline.

Although the policy is limited to the regional STP and CMAQ funds managed by MTC, the state deadlines cited apply to all federal-aid funds administered by the state. Implementing agencies should pay close attention to the deadlines of other state and federal funds on their projects so as not to miss any other applicable funding deadlines.

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